

## Shellfish Conservation Ordinance- 2005-

1. Authority: This ordinance is enacted in accordance with 12 M.R.S.A. 6671.
2. Purpose: To establish a shellfish conservation program for the Town of Brooklin which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
  - A. Licensing
  - B. Limiting the number of shellfish harvesters
  - C. Restricting the time and area where digging is permitted
  - D. Limiting the minimum size of clams taken
  - E. Limiting the amount of clams taken daily by a harvester
  - F. Restricting any taking of shellfish by artificial air supply
3. Shellfish Conservation Committee: The Shellfish Conservation Program for the town of Brooklin will be administered by the Shellfish Conservation Committee consisting of 5 members with one alternate to be (appointed by the selectmen) for terms of three years.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- B. Surveying each clam producing area at least once each three years to establish size distribution and density and annually estimating the status of the town's shellfish resources.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments'.
- E. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- F. Recommending conservation closures and openings to the Board of Selectmen or council in conjunction with area Biologists of the Department of Marine Resources.
- G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.

4. Definitions:

- H. Resident: the term “resident” refers to a person who has been domiciled in this municipality for at least three months next prior to the time of his claim of such residence is made.
- B. Nonresident: the word “nonresident” refers to any one not qualified as a resident under this ordinance.
- C. Shellfish, Clams, and Intertidal Shellfish Resources: when used in the context of this ordinance the words “shellfish”, “clams” and “intertidal shellfish resources” mean soft-shell clams, *Mya arenaria*, and hen clams, *Spisula solidissima*.
- D. Municipality: refers to Town of Brooklin.

5. Licensing: Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

A. Designation, Scope, and Qualifications:

- 1) Residential Commercial Shellfish License: available to residents of the Town of Brooklin and entitles the holder to dig and take any amount of soft shell clams and no more than one bushel of hen clams from the shores and flats of this municipality.
- 2) Nonresident commercial Shellfish License: available to nonresidents of this municipality and entitles the holder to dig and take any amount of soft shell clams and no more than one bushel of hen clams from the shores and flats of this municipality.
- 3) Residential Recreational Shellfish License: available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of soft shell clams and no more than one bushel of hen clams in any one day for the use of himself and his family. Persons holding a State Commercial Shellfish license cannot hold a Resident Recreational License in the Town of Brooklin.
- 4) Nonresident Recreational Shellfish License: available to nonresidents and entitles the holder to dig and take no more than one peck of soft shell clams and no more than one bushel of hen clams in any one-day for the use of

himself and his family. Persons holding a State Commercial shellfish license cannot hold a Nonresident Recreational License in the Town of Brooklin.

- 5) Resident Recreational Shellfish License Over 65 Years: available to residents and real estate taxpayers of this municipality over the age of 65 and entitles the holder to dig and take no more than one peck of soft shell clams and no more than one bushel of hen clams in any one day for the use of himself and his family. Persons holding a State Commercial Shellfish License cannot hold a Resident Recreational Over 65 Years License in the Town of Brooklin.
- 6) Nonresident Recreational Shellfish License Over 65 Years: available to nonresidents over the age of 65 years and entitles the holder to dig and take no more than one peck of soft shell clams and no more than one bushel of hen clams in any one day for the use of himself and his family. Persons holding a State Commercial Shellfish License cannot hold a Nonresident Recreational Over 65 Years License in the Town of Brooklin.
- 7) Any license holder that is not domiciled as a resident in the Town of Brooklin for a period of thirty (30) days, shall make that license null and void.
- 8) License must be signed: the license must be signed to make it valid.

B. Application Procedure: Any person may apply to the Town Clerk for the Licenses required by this ordinance on forms provided by the municipality.

- 1) Contents of Application: the application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- 2) Misrepresentation: Any person providing false information on a license application will cause said license to become invalid and void.

C. Fees: All fees for the licenses must accompany the application for the respective licenses. Fees will be established and may be subject to change annually. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1.00, (one dollar) for each license, which will be retained by the clerk as payment for issuing the license. Fees received by the town for shellfish licensing shall be used for shellfish management, conservation, and enforcement.

D. Limitation Of Diggers: Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number may vary

from year to year depending upon estimates of the resource capabilities and management requirements with good resource utilization. The following procedures will be followed to exercise the control:

- 1) Prior to March 1 the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the number of commercial and noncommercial licenses to be permitted following the requirements of 12 M.R.S.A. Section 6671 (3).
  - 2) The Shellfish Conservation Committee will notify the Town Clerk in writing prior to March 1 the number of licenses to be issued.
  - 3) Notice of the number of Licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
  - 4) The Town Clerk, or designee shall issue licenses at the Town Office to residents and nonresidents as allocated (paragraph 1) from the first Tuesday in May and until the first Tuesday in August after which licenses shall be issued to residents and non-residents on a first-come, first-served basis.
  - 5) It is unlawful for any person to dig or take shellfish from the shores and flats between the hours of ½ hour after sunset and ½ hour before sunrise.
  - 6) Recreational shellfish license fee will be waived for residents 65 years or older.
  - 7) Licenses cannot be returned or resold.
- E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the night before the first Tuesday in May next following date of issue.
- F. Suspension: Any shellfish licensee having two convictions for a violation of this ordinance shall have his shellfish license automatically suspended for a period of thirty days.
- 1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after suspension period has expired.
  - 2) The suspension shall be effective from the date of mailing of a Notice of

Suspension by the Town Clerk to the licensee.

- 3) Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the shellfish conservation Committee upon the filing of a written request for hearing with the Town Clerk within 30 (thirty) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish conservation Committee before the Board of Selectmen/Town Council by filing a written request for appeal with the town Clerk within 7 (seven) days of the decision of the shellfish Conservation committee. (Optional).
- 6) Opening and closing Flats: the Municipal Officers, upon the approval of the Commissioner of Marine Resource, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resource and pothier factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten-day's notice published in a newspaper having general circulation in the town, stating the time, place, and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on finding of fact.
- 7) Minimum Legal Size of Soft-shell Clams: It is unlawful for any person to possess soft shell clams within the town of Brooklin, Hancock County, which are less than 2 inches in the longest diameter except as provided by subsection B of this section.

A. Definitions:

- 1) Lot: the word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
- 2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clamshell stock.

- B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6671 (9).

8. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (9). All monies received from fines for Town violations shall go into the town's shellfish fund.
9. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. Period of Ordinance: This ordinance shall remain in effect for a period of three (3) years from the effective date.
11. Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.
12. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.